

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 3783**

**OFFERED BY MR. OXLEY OF OHIO**

Strike all after the enacting clause and insert the  
following:

**1 SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Child Online Protec-  
3 tion Act”.

**4 SEC. 2. CONGRESSIONAL FINDINGS.**

5       The Congress finds that—

6           (1) as access to and use of the World Wide  
7       Web becomes ubiquitous, the Web and information  
8       transmitted over it may become more invasive and  
9       intrusive in individual and family lives;

10          (2) children now have greater opportunities for  
11       access to the World Wide Web and such access is  
12       continually expanding;

13          (3) while custody, care, and nurture of the child  
14       reside first with the parent, the widespread availabil-  
15       ity of computers presents opportunities for minors to  
16       access materials through the World Wide Web in a  
17       manner that can frustrate parental supervision or  
18       control;

1           (4) the protection of the physical and psycho-  
2           logical well-being of minors by shielding them from  
3           materials that are harmful to them is a compelling  
4           governmental interest;

5           (5) to date, parental control protections and  
6           voluntary industry efforts to self-regulate have not  
7           proven effective as a means to restrict material that  
8           is harmful to minors;

9           (6) the Federal Government has a compelling  
10          interest in ensuring that minors are restricted in  
11          their access to communications made by means of  
12          the World Wide Web that are harmful to minors;  
13          and

14          (7) a prohibition on the distribution of material  
15          harmful to minors and legitimate defenses are the  
16          least restrictive, yet most effective, means to satisfy  
17          the compelling government interest.

18 **SEC. 3. REQUIREMENT TO RESTRICT ACCESS BY MINORS**  
19 **TO MATERIALS SOLD BY MEANS OF THE**  
20 **WORLD WIDE WEB THAT ARE HARMFUL TO**  
21 **MINORS.**

22          Part I of title II of the Communications Act of 1934  
23          (47 U.S.C. 201 et seq.) is amended by adding at the end  
24          the following new section:

1 **“SEC. 231. RESTRICTION OF ACCESS BY MINORS TO MATE-**  
2 **RIALS SOLD BY MEANS OF WORLD WIDE WEB**  
3 **THAT ARE HARMFUL TO MINORS.**

4 “(a) REQUIREMENT TO RESTRICT ACCESS.—

5 “(1) PROHIBITED CONDUCT.—Whoever, in  
6 interstate or foreign commerce, by means of the  
7 World Wide Web, knowingly makes any communica-  
8 tion for commercial purposes that is harmful to mi-  
9 nors to any minor shall be fined not more than  
10 \$50,000, imprisoned not more than 6 months, or  
11 both.

12 “(2) INTENTIONAL VIOLATIONS.—In addition to  
13 the penalties under paragraph (1), whoever inten-  
14 tionally violates such paragraph shall be subject to  
15 a fine of not more than \$50,000 for each violation.  
16 For purposes of this paragraph, each day of viola-  
17 tion shall constitute a separate violation.

18 “(3) CIVIL FINE.—In addition to the penalties  
19 under paragraphs (1) and (2), whoever violates  
20 paragraph (1) shall be subject to a civil fine of not  
21 more than \$50,000 for each violation. For purposes  
22 of this paragraph, each day of violation shall con-  
23 stitute a separate violation. A fine under this para-  
24 graph may be assessed either—

25 “(A) by a court, pursuant to civil action by  
26 the Commission or any attorney employed by

1           the Commission who is designated by the Com-  
2           mission for such purposes, or

3                   “(B) by the Commission after appropriate  
4           administrative proceedings.

5           “(4) INJUNCTIONS.—The Attorney General  
6           may bring a suit in the appropriate district court of  
7           the United States to enjoin any act or practice  
8           which violates paragraph (1) or (2). An injunction  
9           may be granted in accordance with the Federal  
10          Rules of Civil Procedure.

11          “(b) INAPPLICABILITY OF CARRIERS AND OTHER  
12          SERVICE PROVIDERS.—For purposes of subsection (a), a  
13          person shall not be considered to be engaged in making  
14          communications for commercial purposes to the extent  
15          that such person is—

16                “(1) a telecommunications carrier engaged in  
17          the provision of a telecommunications service;

18                “(2) a person engaged in the business of pro-  
19          viding Internet access services; or

20                “(3) similarly engaged in the transmission,  
21          storage, retrieval, formatting, or translation (or any  
22          combination thereof) of a communication made by  
23          another person, without selection or alteration of the  
24          content of the communication.

25          “(c) AFFIRMATIVE DEFENSE.—

1           “(1) DEFENSE.—It is an affirmative defense to  
2           prosecution under this section that the defendant  
3           has restricted access by minors to material that is  
4           harmful to minors by requiring use of a credit card,  
5           debit account, adult access code, or adult personal  
6           identification number or in accordance with such  
7           other procedures as the Commission shall prescribe.  
8           The Commission shall biennially review such proce-  
9           dures and shall revise such procedures as necessary  
10          to carry out the purposes of this section.

11          “(2) PROTECTION FOR USE OF DEFENSES.—No  
12          cause of action may be brought in any court or ad-  
13          ministrative agency against any person on account  
14          of any activity that is not in violation of any law  
15          punishable by criminal or civil penalty, and that the  
16          person has taken in good faith to implement a de-  
17          fense authorized under this subsection or otherwise  
18          to restrict or prevent the transmission of, or access  
19          to, a communication specified in this section.

20          “(d) PRIVACY PROTECTION REQUIREMENTS.—

21                 “(1) DISCLOSURE OF INFORMATION LIMITED.—  
22                 A person making a communication described in sub-  
23                 section (a) shall not disclose any information col-  
24                 lected for the purposes of restricting access to such  
25                 communications to individuals 17 years of age or

1       older without the prior written or electronic consent  
2       of the individual concerned, if an adult, or the indi-  
3       vidual's parent or guardian, if the individual is  
4       under 17 years of age, and shall take such actions  
5       as are necessary to prevent unauthorized access to  
6       such information by a person other than the person  
7       making such communication and the recipient of  
8       such communication.

9               “(2) EXCEPTIONS.—Such a person may disclose  
10       such information if the disclosure is—

11               “(A) necessary to make the communica-  
12       tion, or conduct a legitimate business activity  
13       related to, making the communication;

14               “(B) subject to paragraph (4), made pur-  
15       suant to a court order authorizing such disclo-  
16       sure, if the recipient of the communication is  
17       notified of such order by the person to whom  
18       the order is directed.

19               “(3) REMEDIES.—Any individual aggrieved by  
20       any act in violation of this subsection may bring a  
21       civil action in a United States district court. The  
22       court may award—

23               “(A) actual damages but not less than liq-  
24       uidated damages computed at the rate of \$100

1 a day for each day of violation or \$1,000,  
2 whichever is higher;

3 “(B) punitive damages; and

4 “(C) reasonable attorneys’ fees and other  
5 litigation costs reasonably incurred.

6 “(4) LIMITATION ON COURT ORDERS.—A gov-  
7 ernmental entity may obtain information described  
8 in paragraph (1) pursuant to a court order only if,  
9 in the court proceeding relevant to such court order,  
10 such entity offers probable cause that the subject of  
11 the information is reasonably suspected of engaging  
12 in criminal activity and that the information sought  
13 would be material evidence in the case.

14 “(e) NO AUTHORIZATION OF CONTENT REGULA-  
15 TION.—This section may not be construed to authorize the  
16 Commission to regulate in any manner the content of any  
17 information provided by means of the World Wide Web.

18 “(f) DEFINITIONS.—For purposes of this subsection,  
19 the following definitions shall apply:

20 “(1) BY MEANS OF THE WORLD WIDE WEB.—

21 The term ‘by means of the World Wide Web’ means  
22 by placement of material in a computer server-based  
23 file archive so that it is publicly accessible, over the  
24 Internet, using hypertext transfer protocol or any  
25 successor protocol.

1           “(2) COMMERCIAL PURPOSES; ENGAGED IN THE  
2           BUSINESS.—A person shall be considered to make a  
3           communication for commercial purposes if such per-  
4           son is engaged in the business of making such com-  
5           munications. The term ‘engaged in the business’  
6           means that the person who makes a communication,  
7           or offers to make a communication, by means of the  
8           World Wide Web, that is harmful to minors devotes  
9           time, attention, or labor to such activities, as a regu-  
10          lar course of trade or business, with the objective of  
11          earning a profit, although it is not necessary that  
12          the person make a profit or that the making or of-  
13          fering to make such communications be the person’s  
14          sole or principal business or source of income.

15          “(3) INTERNET.—The term ‘Internet’ means  
16          the combination of computer facilities and electro-  
17          magnetic transmission media, and related equipment  
18          and software, comprising the interconnected world-  
19          wide network of computer networks that employ the  
20          Transmission Control Protocol/Internet Protocol, or  
21          any predecessor or successor protocol to transmit in-  
22          formation.

23          “(4) INTERNET ACCESS.—The term ‘Internet  
24          access service’ means a service that enables users to  
25          access content, information, electronic mail, or other



1 services offered over the Internet, and may also in-  
2 clude access to proprietary content, information, and  
3 other services as part of a package of services of-  
4 fered to consumers. Such term does not include tele-  
5 communications services.

6 “(5) MATERIAL THAT IS HARMFUL TO MI-  
7 NORS.—The term ‘material that is harmful to mi-  
8 nors’ means any communication, picture, image,  
9 graphic image file, article, recording, writing, or  
10 other matter of any kind that—

11 “(A) the average person, applying contem-  
12 porary community standards, would find that  
13 the material, taken as a whole and with respect  
14 to minors, is designed or pandered to appeal to  
15 the prurient interest;

16 “(B) depicts, describes, or represents, in a  
17 manner patently offensive with respect to mi-  
18 nors, an actual or simulated sexual act or sex-  
19 ual contact, actual or simulated normal or per-  
20 verted sexual acts, or a lewd exhibition of the  
21 genitals; and

22 “(C) taken as a whole, lacks serious lit-  
23 erary, artistic, political, or scientific value for  
24 minors.

1           “(6) MINOR.—The term ‘minor’ means any per-  
2           son under 17 years of age.”.

3   **SEC. 5. NOTICE REQUIREMENT.**

4           (a) NOTICE.—Section 230 of the Communications  
5   Act of 1934 (47 U.S.C. 230) is amended—

6               (1) by redesignating subsections (d) and (e) as  
7           subsections (e) and (f), respectively;

8               (2) by inserting after subsection (c) the follow-  
9           ing new subsection:

10          “(d) OBLIGATIONS OF INTERNET ACCESS PROVID-  
11   ERS.—A provider of Internet access service (as such term  
12   is defined in section 231) shall, at the time of entering  
13   an agreement with a customer for the provision of Internet  
14   access services and in a manner deemed appropriate by  
15   the provider, notify such customer that parental control  
16   protections (such as computer hardware, software, or fil-  
17   tering services) are commercially available that may assist  
18   the customer in limiting access to material that is unsuit-  
19   able for children. Such notice shall identify, or provide the  
20   customer with access to information identifying, current  
21   providers of such protections.”.

22          (b) CONFORMING AMENDMENT.—Section 223(h)(2)  
23   of the Communications Act of 1934 (47 U.S.C. 223(h)(2))  
24   is amended by striking “230(e)(2)” and inserting  
25   “230(f)(2)”.

1   **SEC. 6. STUDY OF TOP LEVEL DOMAINS.**

2           (a) NTIA STUDY.—The National Telecommuni-  
3 cations and Information Administration shall conduct a  
4 study of the economic, technical, and administrative fea-  
5 sibility of—

6           (1) creating a second level adult domain space  
7           (such as “adult.us”) that would be available within  
8           the “.us” domain; and

9           (2) transferring commercial distributors of in-  
10          formation that is harmful to minors (within the  
11          meaning of section 231 of the Communications Act  
12          of 1934, as added by this Act) to that domain.

13          (b) REPORT.—Within 6 months after the date of en-  
14          actment of this Act, the Assistant Secretary for Commu-  
15          nications and Information of the Department of Com-  
16          merce shall transmit to the Congress a report on the study  
17          required by subsection (a). Such report shall include such  
18          policy recommendations as the Assistant Secretary consid-  
19          ers appropriate concerning—

20           (1) the creation and adoption of the second  
21           level adult domain space described in subsection  
22           (a)(1); and

23           (2) other measures required to provide appro-  
24           priate zoning or screening of communications that  
25           are harmful to minors.

1   **SEC. 7. GLOBAL PROTECTION.**

2           Within 6 months after the date of enactment of this  
3 Act, the Secretary of Commerce shall submit to the Con-  
4 gress a report—

5           (1) analyzing the global distribution over the  
6 Internet of material that is harmful to minors;

7           (2) making recommendations on methods for  
8 reducing such distribution; and

9           (3) containing suggested legislative or adminis-  
10 trative actions to implement those methods.